

DEFAULT DECISIONS**AGRICULTURAL MARKETING AGREEMENT ACT****In re: CALE BLOCKER.****AMAA Docket No. 98-0003.****Decision and Order filed January 5, 1999.**

Colleen A. Carroll, for Complaint.

Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

This proceeding was instituted under the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. § 601 *et seq.* (the "Act"), and the Marketing Order for Vidalia Onions Grown in Georgia, 7 C.F.R. Part 955 (the "Vidalia Onion Order"), by a complaint filed by the Administrator of the Agricultural Marketing Service, United States Department of Agriculture, alleging that respondent Cale Blocker, willfully violated the Vidalia Onion Order.

The Hearing Clerk served on the respondent, by mail, copies of the complaint and the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-1.151). The respondent was informed in the accompanying letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation. The respondent has failed to file an answer within the time prescribed in the Rules of Practice, or at all, and the material facts alleged in the complaint, which are admitted by the respondent's failure to file an answer, are adopted and set forth herein as Findings of Fact. This decision and order is issued pursuant to section 1.139 of the Rules of Practice.

Findings of Fact

1. Respondent Cale Blocker is an individual whose mailing address is Route 1, Box 80, Glennville, Georgia 30427. At all times mentioned herein, said respondent was a "handler" as that term is defined in the Act, 7 U.S.C. § 608c(1), and the Vidalia Onion Order, 7 C.F.R. § 955.6.

2. Between approximately February 1997 and the present, respondent Cale Blocker has willfully violated sections 955.60 and 955.101 of the Vidalia Onion Order, 7 C.F.R. §§ 955.60, 955.101, by failing to file with the Vidalia Onion Committee monthly reports of the respondent's receipts and shipments of Vidalia onions.

3. Between approximately February 1997 and the present, respondent Cale Blocker has willfully violated sections 955.42 and 955.142 of the Vidalia Onion Order, 7 C.F.R. §§ 955.42, 955.142, by failing to remit \$7,292.70 in assessments owed in the 1996-1997 fiscal period, plus late payment charges and accrued interest thereon.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. By reason of the facts set forth in the Findings of Fact above, the respondent has violated sections 955.42, 955.60, 955.101, and 955.142 of the Vidalia Onion Order (7 C.F.R. §§ 955.42, 955.60, 955.101, 955.142).
3. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondents are assessed a civil penalty of \$11,500, which shall be paid by a certified check or money order made payable to the Treasurer of the United States.

2. Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, from paying to the Vidalia Onion Committee \$7,292.70 in past due assessments for crop year 1996-1997, plus interest of one percent per month pursuant to section 955.142 of the Vidalia Onion Order, and from paying to the Vidalia Onion Committee any and all assessments due under the Vidalia Onion Order for crop year 1997-1998.

The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice. Copies of this decision shall be served upon the parties.

[This Decision and Order became final March 15, 1999.-Editor]

ANIMAL QUARANTINE AND RELATED LAWS**In re: JOHN STEVE CAPERON.****A.Q. Docket No. 98-0001.****Decision and Order filed December 18, 1998.**

James A. Booth, for Complainant.

Respondent, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of Section 2 of the Act of February 2, 1903, as amended (21 U.S.C. § 111)(Act), and the regulations promulgated thereunder governing the importation of birds into the United States from Mexico (9 C.F.R. §§ 92.100 *et seq.*)(regulations), in accordance with the Rules of Practice in 7 C.F.R. § 1.130 *et seq.*

This proceeding was instituted under Act and the regulations by a complaint filed on January 14, 1998, by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision and Order as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.139).

Findings of Fact

1. John Steve Caperon is an individual whose last know mailing address is c/o Pima County Jail, P. O. Box 951, Tucson, Arizona 85702.
2. On or about August 19, 1996 , the respondent brought two birds into the United States at Nogales, Arizona, from Mexico, in violation of 9 C.F.R. §§ 92.101, 92.101(c)(3), 92.102(a), 92.103(a)(1), 92.104, and 92.105(b).

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Act and the regulations issued under the Act (9 C.F.R. § 92.100 *et seq.*). Therefore, the following Order is issued.

Order

The respondent, John Steve Caperon, is hereby assessed a civil penalty of two thousand dollars (\$2,000.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to A.Q. Docket No. 98-0001.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final February 24, 1999.-Editor]

In re: RUDOLPH J. LUSCHER, JR.
A.Q. Docket No. 98-0008.
Decision and Order filed December 18, 1998.

Howard Levine, for Complainant.
Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the Act of February 2, 1903, as amended (21 U.S.C. §§ 111, 122)

(Act), and the regulations promulgated thereunder (9 C.F.R. § 85.1 *et seq.*) (regulations).

This proceeding was instituted by a complaint filed against Rudolph J. Luscher, Jr., respondent, on May 8, 1998, by the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture. Respondent has not filed an answer to date. Pursuant to section 1.136(c) of the rules of practice (7 C.F.R. § 1.136(c)), failure to deny or otherwise respond to the allegations in the complaint constitutes, for the purposes of this proceeding, an admission of said allegations. By respondent's failure to answer, respondent has admitted the allegations of the complaint.

Accordingly, the material allegations alleged in the complaint are adopted and set forth herein as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the rules of practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Rudolph Luscher, Jr. is an individual with a mailing address of 6121 N.E. 284th, Battleground, WA, 98604.

2. Between February 15, 1996, and February 22, 1996, the respondent violated 9 C.F.R. § 78.9(a)(3)(iii) by the movement of 299 test-eligible cattle from Battleground, Washington to Adrian, Oregon, at least 32 of which were moved without a certificate containing prescribed information, as required.

3. Between February 15, 1996, and February 22, 1996, the respondent violated 9 C.F.R. § 71.18(a)(1)(iii) by the movement of 299 cattle two years of age or older from Battleground, Washington to Adrian, Oregon, of which at least 32 were moved without the required backtags, ear tags, brands, or other acceptable individual identification.

Conclusion

By reason of the facts contained in paragraphs one through three above, Rudolph Luscher, Jr. has violated 9 C.F.R. §§ 78.9(a)(3)(iii) and 71.18(a)(1)(iii). Therefore, the following order is issued.

Order

Rudolph Luscher, Jr., respondent, is hereby assessed a civil penalty of two thousand dollars (\$2000). This penalty shall be payable to "Treasurer of the United States" by certified check or money order, and shall be forwarded to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
Butler Square West, 5th Floor
100 North Sixth Street
Minneapolis, Minnesota 55403

within thirty days from the effective date of this order. The certified check or money order should include the docket number of this proceeding.

This Order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty-five (35) days after service of this Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the rules of practice applicable to this proceeding (7 C.F.R. § 1.145).

[This Decision and Order became final March 17, 1999.-Editor]

In re: GARY THOMPSON.

A.Q. Docket No. 98-0009.

Decision and Order filed February 17, 1999.

James A. Booth, for Complainant.

Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for violations of the regulations governing the interstate transportation of animals and animal products (9 C.F.R. § 70 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. § 1.130 *et seq.*

This proceeding was instituted under section 2 of the Act of February 2, 1903, as amended (21 U.S.C. § 111) and sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. § 120)(Acts) and the regulations promulgated thereunder, by

a complaint filed on June 8, 1998, by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing. (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision and Order as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Gary Thompson is an individual whose mailing address is 456 Donald Perkins Road, Pitkin, Louisiana 70656.

2. On or about October 24, 1996, the respondent, in violation of 9 C.F.R. § 78.9(b)(3)(ii), moved approximately 15 test-eligible cattle interstate from Louisiana to Texas without such cattle being accompanied interstate by a certificate, as required.

3. On or about October 24, 1996, the respondent, in violation of 9 C.F.R. § 71.18(a)(1)(i), moved approximately 15 cattle two years of age or older interstate from Louisiana to Texas without such cattle being accompanied interstate by an owner-shipper statement or other document with prescribed information, as required.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Acts and the regulations issued under the Act (9 C.F.R. § 70 *et seq.*). Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of one thousand dollars (\$1,000.00). This civil penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to A.Q. Docket No. 98-0009.

This Order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final March 28, 1999.-Editor]

In re: JOAQUIN LOPEZ.
A.Q. Docket No. 99-0002.
Decision and Order filed March 12, 1999.

James A. Booth, for Complainant.
Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the interstate transportation of animals and animal products (9 C.F.R. § 70 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. § 1.130 *et seq.*

This proceeding was instituted under section 2 of the Act of February 2, 1903, as amended (21 U.S.C. § 111) and sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. § 120)(Acts) and the regulations promulgated thereunder, by a complaint filed on October 15, 1998, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing. (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in

this Default Decision and Order as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Joaquin Lopez, respondent, is an individual whose mailing address is 336 Colonial Road, Toms River, New Jersey 08753.

2. On or about January 12, 1997, respondent imported approximately 2 kilos of pork from Mexico into the United States at Houston, Texas, in violation of 9 C.F.R. § 94.9(b), because the pork was not treated, and other requirements were not complied with, as required.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Acts and the regulations issued under the Act (9 C.F.R. § 70 *et seq.*). Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of five hundred dollars (\$500.00). This civil penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to A.Q. Docket No. 99-0002

This Order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final April 22, 1999.-Editor]

In re: ALEJANDRO HERRERA CAAMANO.

A.Q. Docket No. 96-0020.

Decision and Order filed April 1, 1999.

Rick Herndon, for Complainant.

Respondent, Pro se.

Decision and Order issued by James W. Hunt, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the importation of birds into the United States (9 C.F.R. § 92.101 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 9 C.F.R. § 70.1 *et seq.* and 7 C.F.R. § 1.130 *et seq.*

This proceeding was instituted under section 2 of the Act of February 2, 1903, as amended (21 U.S.C. § 111)(Act) and the regulations promulgated thereunder, by a complaint filed on September 3, 1996, by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing. (7 C.F.R. § 1.139).

In its proposed order, complainant seeks a \$2,000 penalty. However, the Act provides for a maximum civil penalty of \$1,000 for each violation. (21 U.S.C. § 122.) The complaint, although referring to the importation of two birds, does not specifically allege more than one violation. Thus, the maximum penalty in this case cannot exceed \$1,000. This penalty in turn is reduced to \$500 pursuant to *Ricky Bobo, et al.*, 49 Agric. Dec. 849 (1990). Finally, complainant, in proposing any penalty, should have considered that a penalty had already been imposed. *Simon Vejar Sanchez*, 43 Agric. Dec. 748 (1984).

Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision and Order as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Alejandro Herrera Caamano, herein referred to as the respondent, is an individual whose mailing address is 7915 Elmer Avenue, Sun Valley, California 91352.

2. On or about November 10, 1995, respondent imported one live White-fronted Amazon parrot and one live Green Conure from Mexico into the United States at Nogales, Arizona. The importation of the birds violated the Act and the regulations specified below:

A. The birds were not imported into the United States at a designated port in accordance with 9 C.F.R. § 92.101 and 102;

B. The birds were not accompanied by a permit in accordance with 9 C.F.R. § 92.103;

C. The birds were not accompanied by a certificate in accordance with 9 C.F.R. § 92.104; and

D. The birds were not inspected in accordance with 9 C.F.R. § 92.105.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Acts and the regulations issued under the Acts (9 C.F.R. § 92.101 *et seq.*). Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of five hundred dollars (\$500.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to A.Q. Docket No. 96-0020.

This order shall have the same force and effect as if entered after a full hearing

and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final May 19, 1999.-Editor]

ANIMAL WELFARE ACT

**In re: DAVID T. RICHTMAN, d/b/a DAVID RICHTMAN'S BEARS, ETC.
AWA Docket No. 98-0003.**

Decision and Order filed August 18, 1998.

Sharlene Deskins, for Complainant.

Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 *et seq.*), by a Complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the Respondent willfully violated the Act and the regulations issued thereunder (9 C.F.R. § 1.1 *et seq.*).

Copies of the Complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were sent to the Respondent by regular mail on December 2, 1997. Respondent was informed in the letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the Complaint would constitute an admission of that allegation.

Respondent failed to file an answer addressing the allegations contained in the Complaint within the time prescribed in the Rules of Practice. Therefore, the material facts alleged in the Complaint, which are admitted as set forth herein by Respondent's failure to file an answer pursuant to the Rules of Practice, are adopted as set forth herein as Findings of Fact and Conclusions of Law.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact and Conclusions of Law**I**

A. David T. Richtman, hereinafter referred to as Respondent, is an individual doing business as David Richtman's Bears, Etc., whose address is P.O. Box 359 Gonzales, Texas 78629.

B. The Respondent, was a licensed exhibitor until April 8, 1997. The Respondent's license was suspended from April 8, 1997, through May 7, 1997, due to an Order issued in AWA Docket No. 96-0081.

II

A. From April 8, 1997, through May 7, 1997, the Respondent operated as an exhibitor as defined in the Act and regulations without being licensed, in willful violation of section 4 of the Act (7 U.S.C. § 2134) and section 2.1 of the regulations (9 C.F.R. § 2.1). The Respondent exhibited animals while his license was suspended. Each day that the Respondent exhibited animals is a separate violation.

III

On April 10, 1997, APHIS inspected the Respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. Animals kept outdoors were not provided with adequate shelter from inclement weather (9 C.F.R. § 3.127(b)); and
2. Housing facilities for animals were not structurally sound and maintained in good repair so as to protect the animals from injury (9 C.F.R. § 3.125(a)).

IV

A. On December 3, 1996, APHIS inspected Respondent's premises and found that Respondent failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

B. On December 3, 1996, APHIS inspected the Respondent's facility and found the Respondent willfully violated section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified, since animals kept outdoors were not provided with adequate shelter from inclement weather and the sun (9 C.F.R. § 3.127(a) and (b)).

Conclusions

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts set forth in the Findings of Fact above, the

Respondent has violated the Act and regulations promulgated under the Act.

3. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from:

(a) Failing to construct and maintain housing facilities for animals so that they are structurally sound and in good repair;

(b) Failing to provide animals with adequate shelter from the elements;

(c) Failing to establish and maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine; and

(d) Engaging in any activity for which a license is required under the Act and regulations without being licensed as required.

2. The Respondent is assessed a civil penalty of \$6,500, which shall be paid by a certified check or money order made payable to the Treasurer of United States. The check shall be sent to the following address:

1400 Independence Ave., S.W.
Room 2014-South Building Stop 1417
Washington, D.C. 20250-1417

The disqualification from applying for a license as stated below shall continue until the civil penalty is paid.

3. Respondent's license is suspended until the license expires. After the license expires the Respondent is disqualified from applying for a license for ten years.

The provisions of this Order shall become effective on the first day after service of this decision on the Respondent.

Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

[This Decision and Order became final October 7, 1998.-Editor]

**In re: BRENDA McCURDY, d/b/a TEXAS ANIMAL EXPORT.
AWA Docket No. 98-0022.
Decision and Order filed October 23, 1998.**

Frank Martin, Jr., for Complainant.
Respondent, Pro se.

Decision and Order issued by James W. Hunt, Administrative Law Judge.

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 *et seq.*), by a Complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the Act and the regulations issued thereunder (9 C.F.R. § 1.1 *et seq.*).

Copies of the Complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served upon respondent by personal service on July 23, 1998. Respondent was informed in the letter of service that an Answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent failed to file an Answer addressing the allegations contained in the complaint within the time prescribed in the Rules of Practice. Therefore, the material facts alleged in the Complaint, which are admitted as set forth herein by respondent's failure to file an Answer pursuant to the Rules of Practice, are adopted as set forth herein as Findings of Fact and Conclusions of Law.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact and Conclusions of Law

I

1. A. Brenda McCurdy, hereinafter referred to as respondent, is an individual doing business as Texas Animal Export whose address is P. O. Box 372, Crystal City, Texas 78839.

B. The respondent, at all times material hereto, was operating as a dealer as defined in the Act and the regulations.

2. A. During 1995 and 1996, the respondent operated as a dealer as defined in the Act and regulations without having obtained a license, in willful violation of

section 4 of the Act (7 U.S.C. § 2134) and section 2.1 of the regulations (9 C.F.R. § 2.1). Respondent sold, in commerce, at least 3,499 animals for research, for use as pets, or for exhibition. Each sale constitutes a separate violation.

Conclusions

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts set forth in the Findings of Fact above, the respondent has violated the Act and regulations promulgated under the Act.
3. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondent, her agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from engaging in any activity for which a license is required under the Act and regulations without being licensed as required.
2. The respondent is assessed a civil penalty of \$22,000, which shall be paid by a certified check or money order made payable to the Treasurer of United States.
3. The respondent is disqualified for a period of one year from becoming licensed under the Act and regulations.

Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

[This Decision and Order became final January 28, 1999.-Editor]

In re: HAROLD P. KAFKA.
AWA Docket No. 98-0028.
Decision and Order filed December 1, 1998.

Brian Hill, for Complainant.
Respondent. Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 *et seq.*), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the Act and the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 *et seq.*).

A copy of the complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served by the Hearing Clerk on the respondent on September 18, 1998. Respondent was informed in the letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted as set forth herein by respondents' failure to file an answer, are adopted and set forth herein as Findings of Fact and Conclusions of Law.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact and Conclusions of Law

1. Harold P. Kafka, hereinafter referred to as the respondent, is an individual with a mailing address of 901 Valley Road, Watchung, New Jersey 07060.
2. The respondent, at all times material hereto, was operating as an exhibitor as defined in the Act and the regulations.
3. On December 24 and 25, 1997, the respondent exhibited animals without having a license as required, in willful violation of section 2.1 of the regulations (9 C.F.R. § 2.1(a)).

Conclusions

1. The Secretary has jurisdiction in this matter.
2. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondent is assessed a civil penalty of \$5,000, which shall be paid by a certified check or money order made payable to the Treasurer of the United States.

2. Furthermore, respondent shall pay a civil penalty of \$22,500, which was imposed in the decision and order on December 5, 1998 in AWA Docket No. 97-0025 but was suspended upon the condition that the respondent not violate the Animal Welfare Act or the regulations and standards thereunder for a period of 20 years from the effective date of the order.

The provisions of this order shall become effective on the first day after this decision becomes final.

Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

[This Decision and Order became final February 21, 1999.-Editor]

**In re: MILTON A. MURPHY, d/b/a RAY SINGLETON AND COMPANY.
AWA Docket No. 98-0031.**

Decision and Order filed January 20, 1999.

Brian Hill, for Complainant.

Respondent, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 *et seq.*), by a Complaint filed July 28, 1998, by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the Act,

and the regulations and standards issued thereunder (9 C.F.R. § 1.1 *et seq.*).

Copies of the Complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were sent via certified mail to the respondent, return receipt requested, on July 28, 1998. The copies were returned to the office of the Hearing Clerk marked "unclaimed" on August 25, 1998. Pursuant to the Act, 7 C.F.R. § 1.147(c)(1), copies of the Complaint and the Rules of Practice were sent by ordinary mail to the respondent on October 15, 1998. Respondent was informed in the letter of service that an Answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent failed to file an Answer addressing the allegations contained in the complaint within the time prescribed in the Rules of Practice. By letter dated January 11, 1999, and filed with the Hearing Clerk on January 12, 1999, the respondent did not deny failing to file an Answer to the Complaint and he set forth reasons why he should be excused from such requirement. However, the circumstances recited by respondent do not furnish a basis for me to deny the Motion for a Default Decision. Therefore, the material facts alleged in the Complaint, which are admitted as set forth herein by respondent's failure to file an Answer pursuant to the Rules of Practice, are adopted as set forth herein as Findings of Fact and Conclusions of Law.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact and Conclusions of Law

I

A. Milton A. Murphy, hereinafter referred to as the respondent, is an individual doing business as Ray Singleton and Company, with a mailing address of 10346 B & R Cattle Ranch Road, Arcadia, Florida 34266.

B. The respondent, at all times material herein, was licensed and operating as a dealer as defined in the Act and the regulations. Respondent voluntarily terminated his license on September 4, 1997.

II

On August 6, 1996, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. §

2.100(a)) and the standards specified below:

1. Primary enclosures were not kept clean, as required (9 C.F.R. § 3.131(a)); and
2. The facilities for animals were not structurally sound and maintained in good repair so as to protect the animals from injury, to contain the animals, and to restrict the entrance of other animals. The structural deficiencies included the absence of a suitable perimeter fence or equivalent safeguards, necessary for the safe containment of dangerous, carnivorous wild animals (9 C.F.R. § 3.125(a)).

III

A. On March 10, 1997, APHIS inspected respondent's premises and found that respondent had failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

B. On March 10, 1997, APHIS inspected respondent's premises and records and found that the respondent had failed to maintain complete records showing the acquisition, disposition, and identification of animals, in willful violation of section 10 of the Act (7 U.S.C. § 2140) and section 2.75(a)(1) of the regulations (9 C.F.R. § 2.75(a)(1)).

C. On March 10, 1997, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. The facilities for animals were not structurally sound and maintained in good repair so as to protect the animals from injury, to contain the animals, and to restrict the entrance of other animals. The structural deficiencies included the absence of a suitable perimeter fence or equivalent safeguards, necessary for the safe containment of dangerous, carnivorous wild animals (9 C.F.R. § 3.125(a));
2. Primary enclosures were not kept clean, as required (9 C.F.R. § 3.131(a));
3. Sufficient shade was not provided to allow animals to protect themselves from the direct sunlight (9 C.F.R. § 3.127(a)); and
4. The premises (buildings and grounds) were not kept clean and in good repair and free of accumulations of trash (9 C.F.R. § 3.131(c)).

Conclusions

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts set forth in the Findings of Fact and Conclusions of Law above, the respondent has violated the Act and the regulations and standards promulgated under the Act.
3. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from:

- (a) Failing to maintain primary enclosures for animals in a clean and sanitary condition;
- (b) Failing to construct and maintain housing facilities for animals so that they are structurally sound and in good repair in order to protect the animals from injury, contain them securely, and restrict other animals from entering;
- (c) Failing to provide animals kept outdoors with adequate shelter from the sun;
- (d) Failing to keep the premises clean and in good repair and free of accumulations of trash, junk, waste, and discarded matter, and to control weeds, grasses and bushes;
- (e) Failing to maintain records of the acquisition, disposition, description, and identification of animals, as required; and
- (f) Failing to establish and maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine.

2. The respondent is assessed a civil penalty of \$3,000.00, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

3. Respondent is disqualified from obtaining a license under the Act and regulations for a period of two years, and continuing thereafter until he demonstrates to the Animal and Plant Health Inspection Service that he is in full compliance with the Act, the regulations and standards issued thereunder, and this order, including payment of the civil penalty imposed herein.

The provisions of this order shall become effective on the first day after this decision becomes final.

Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

[This Decision and Order became final March 8, 1999.-Editor]

In re: BRIAN ADRIAN NEELY, d/b/a TEXOTICS.
AWA Docket No. 98-0040.
Decision and Order filed February 12, 1999.

Frank Martin, Jr., for Complainant.

Respondent, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 *et seq.*), by a Complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the Act and the regulations issued thereunder (9 C.F.R. § 1.1 *et seq.*).

Copies of the Complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served upon respondent by regular mail on October 15, 1997. Respondent was informed in the letter of service that an Answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent failed to file an Answer addressing the allegations contained in the complaint within the time prescribed in the Rules of Practice. Therefore, the material facts alleged in the Complaint, which are admitted as set forth herein by respondent's failure to file an Answer pursuant to the Rules of Practice, are adopted as set forth herein as Findings of Fact and Conclusions of Law.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact

1. (a) Brian Adrian Neely, doing business as TEXOTICS, hereinafter referred to as the respondent, is an individual whose mailing address is 168 Pine Lane, Montgomery, Texas 77356.

(b) The respondent, at all times material hereto, was operating as a dealer as defined in the Act and regulations.

2. On or about July 21, 1997, the respondent operated as a dealer as defined in the Act and the regulations, without being licensed, in willful violation of section 4 of the Act (7 U.S.C. § 2134) and section 2.1 of the regulations (9 C.F.R. § 2.1). Respondent sold, in commerce, one spider monkey for resale, for use as a pet or for exhibition.

3. On or about July 28, 1997, the respondent operated as a dealer as defined in the Act and the regulations, without being licensed, in willful violation of section 4 of the Act (7 U.S.C. § 2134) and section 2.1 of the regulations (9 C.F.R. § 2.1). Respondent sold, in commerce, one cougar for resale, for use as a pet or for exhibition.

Conclusions

1. The Secretary has jurisdiction in this matter.

2. By reason of the facts set forth in the Findings of Fact above, the respondent has violated the Act and regulations promulgated under the Act.

3. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations issued thereunder, and in particular, shall cease and desist from engaging in any activity for which a license is required under the Act and regulations without being licensed as required.

2. The respondent is assessed a civil penalty of \$3,000, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

3. The respondent is disqualified for a period of three years from becoming licensed under the Act and regulations.

Pursuant to the Rules of Practice, this decision becomes final without further

proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

[This Decision and Order became final March 26, 1999.-Editor]

In re: JO ANNE LOHSE.

AWA Docket No. 99-0003.

Decision and Order filed March 10, 1999.

Robert Ertman, for Complainant.

Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 *et seq.*), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the Respondent willfully violated the Act and the regulations issued pursuant to the Act (9 C.F.R. § 1.1 *et seq.*).

A copy of the complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, was duly served on the Respondent by the Office of the Hearing Clerk. Respondent was informed in the letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted as set forth herein by Respondent's failure to file an answer, are adopted and set forth herein as Findings of Fact and Conclusions of Law.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact and Conclusions of Law

1. Jo Anne Lohse, hereinafter referred to as the Respondent, is an individual with a mailing address of P.O. Box 212, Tilden, Nebraska 68781.
2. The Respondent, at all times material hereto, was operating as a dealer as

defined in the Act and the regulations.

3. Between February 21, 1997, and June 8, 1997, the Respondent acted as a dealer of animals as defined in the Act and the regulations without having a license as required, in willful violation of section 2.1 of the regulations (9 C.F.R. § 2.1(a)) on at least 14 occasions.

Conclusions

1. The Secretary has jurisdiction in this matter.
2. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondent, her agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations issued thereunder.

2. A. The Respondent is assessed a civil penalty of \$14,000.00, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

B. In addition, the Respondent shall pay a civil penalty of \$8,000.00, which was assessed but suspended by the Consent Decision and Order issued in AWA Docket 96-0029 on February 14, 1997.

3. The Respondent is permanently disqualified from becoming licensed under the Animal Welfare Act.

The provisions of this order shall become effective on the first day after this decision becomes final.

Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

[This Decision and Order became final April 26, 1999.-Editor]

FEDERAL CROP INSURANCE ACT**In re: JOHN L. SHAW.****FCIA Docket No. 99-0001.****Decision and Order filed March 17, 1999.**

Donald McAmis, for Complainant.

Respondent, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

This is an administrative proceeding instituted by a Complaint filed October 23, 1998, under the Federal Crop Insurance Act, as amended (7 U.S.C. § 1501 *et seq.*) and the regulations promulgated thereunder. The Complaint alleges that the Respondent should be disqualified from purchasing catastrophic risk protection or any other benefit under the Act, for specified periods.

A copy of the Complaint was mailed by certified mail to the Respondent on October 26, 1998 [P.O. stamp], at which time it was addressed to Respondent at P.O. Box 250, Byron, Georgia 31008. This certified mailing was returned to the Hearing Clerk's Office on November 17, 1998, marked "Unclaimed". Thereafter, on December 11, 1998, the Hearing Clerk remailed the Complaint, by regular mail, to the Respondent at 3424 Burnett Road, Byron, Georgia 31008.

The aforementioned procedure fulfills the requirements for valid service pursuant to section 1.147 of the Rules of Practice and Procedure (7 C.F.R. § 1.147). By communication dated January 14, 1999, the Hearing Clerk advised the Respondent that an Answer to the Complaint had not been received within the allotted time. On January 22, 1999, the Complainant filed a Motion for Decision, together with a Proposed Decision, premised upon Respondent's failure to file an Answer within the time allotted.

By objections filed February 19, 1999, the Respondent, through counsel, objected to the Complainant's Motion for Decision. Among other things, the Respondent's objections included certain denials of the allegations of the Complaint, and the assertion that Respondent's failure to file an Answer to the Complaint was due to lack of notice of the proceedings. It was further stated: "Respondent is without sufficient means to adequately participate in further hearing and, therefore, waives oral hearing and requests that this case be decided based upon the pleadings." The case was assigned to this Judge on February 23, 1999. On February 25, 1999, I issued a document entitled "Complainant to File Additional information." On March 5, 1999, the Complainant filed: "Complainant's Response to Respondent's Objection to Motion for Decision."

The "P.O. Box 250" address used was the same address used by United States District Court for the Middle District of Georgia on April 27, 1998 to serve a copy of the judgment against Respondent entered April 14, 1998, for making false statements regarding Federal Crop Insurance on August 12, 1994. Respondent's residence is listed on the judgment as the same address. No response by Respondent was ever received from the remailing, by regular mail, of the Complaint.

The Respondent has requested that this case be decided based upon the pleadings. I have done so. After consideration of all of the pleadings and the record as a whole, I find:

(1) That Respondent was properly served with the Complaint in accordance with the Rules of Practice;

(2) That no response was received from the Respondent within the period specified under the Rules for the filing of an Answer;

(3) Under the Rules of Practice, the failure to timely file an Answer is deemed an admission of the allegations of the Complaint;

(4) John L. Shaw hereinafter referred to as Respondent, has an address of P.O. Box 250, Burnett Road, Byron, Georgia 31008;

(5) Respondent was a participant in the Federal Crop Insurance Program under the Act and the regulations;

(6) Respondent concealed part of his 1994 wheat production and collected an indemnity payment for a reported loss of production on this concealed portion while participating in the federally sponsored Multiple Peril Crop Insurance (MPCI) Program;

(7) Respondent filed false claims with Crop Hail Management, a company reinsured by FCIC to receive an indemnity payment of \$68,385.00;

(8) On August 12, 1994, Respondent pled guilty in the United States District Court for the Middle District of Georgia, to one count of false statements regarding crop insurance;

(9) On April 14, 1998, Respondent was ordered to make restitution to FCIC in the amount of \$26,203.36, committed to the custody of the United States Bureau of Prison for Imprisonment for a term of six months and upon release of imprisonment a five-year term of supervised probation; and

(10) On August 8, 1998, Respondent reimbursed the Risk Management Agency \$26,203.36 for indemnity overpayments.

Conclusions

Respondent has willfully and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the Act [7 U.S.C. § 1506(n)]. Pursuant to section 506 of the Act (7 U.S.C. § 1506) and subpart R of the Regulations (7 C.F.R. § 400.454), the violations detailed above are grounds for disqualification of the Respondent from purchasing catastrophic risk protection and any other benefit under the Act, for a specified period.

Even if the allegations of the Complaint were not deemed admitted (which they are), the attachments submitted by Complainant in its Response filed March 5, 1999, show that Respondent willfully and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the Federal Crop Insurance Act.

The Complainant has filed an Amendment to the Complaint changing the date in Paragraph II(c) from August 12, 1984 to August 12, 1994.

Order

Pursuant to section 506 of the Act (7 U.S.C. § 1506), Respondent, and any entity in which he retains substantial beneficial interest after the period of disqualification has commenced, is disqualified from purchasing catastrophic risk protection for a period of one year and from receiving any other benefit under the Act for a period of five years. The period of disqualification shall be effective thirty-five (35) days after this decision is served on the Respondent unless there is an appeal to the Judicial Officer pursuant to § 1.145 of the Rules of Practice.

If the period of disqualification would commence after the beginning of the crop year, and the Respondent has a crop insurance policy in effect, disqualification will commence at the beginning of the following crop year and remain in effect for the entire period specified in this decision.

Copies hereof shall be served upon the parties.

[This Decision and Order became final April 28, 1999.-Editor]

**FEDERAL MEAT INSPECTION ACT and
POULTRY PRODUCTS INSPECTION ACT**

In re: PALERMO SAUSAGE CO., and WILLIAM DEFELICE.

FMIA Docket No. 98-0006.

PPIA Docket No. 98-0004.

Decision and Order filed January 6, 1999.

Rick Herndon, for Complainant.

Respondents, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

This is an administrative proceeding for the denial and withholding of inspection services under Title I the FMIA (21 U.S.C. §§ 601 *et seq.*) and the PPIA (21 U.S.C. §§ 451 *et seq.*), in accordance with the rules of practice governing proceedings under the FMIA (9 C.F.R. § 335.1), the PPIA (9 C.F.R. § 381.230) and section 1.136 of the Uniform Rules of Practice (7 C.F.R. § 1.136).

This proceeding was instituted under the FMIA and the PPIA, by a complaint filed on August 13, 1998, by the Administrator of the Food Safety and Inspection Service, United States Department of Agriculture. The respondents failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the admission of the allegations in the complaint constitutes a waiver of hearing. (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Palermo Sausage Company is an unincorporated business with a mailing address of 837 Franklin Avenue, New Castle, Pennsylvania 16101
2. Respondent William DeFelice is an individual with a mailing address of 2009 Wilson Avenue, New Castle, Pennsylvania 16101.
3. On or about November 12, 1996, William DeFelice and Carolyn A. DeFelice, d/b/a Palermo Sausage Company, submitted an application for grant of meat inspection services under Title I of the FMIA and poultry products inspection

services under the PPIA for Palermo Sausage Company located at 3005 Ellwood-New Castle Road, New Castle, Pennsylvania 16101.

4. The respondents' application for inspection services stated that William DeFelice was president and Carolyn A. DeFelice was vice-president of Palermo Sausage Company. Palermo Sausage Company is not incorporated in any state.

5. On or about December 11, 1995, respondent William DeFelice pleaded guilty to six felony counts in the Court of Common Pleas of Lawrence County, State of Pennsylvania. The felony counts included one count of theft by unlawful taking or disposition, one count of criminal conspiracy to commit theft by unlawful taking or disposition, one count of receiving stolen property, one count of criminal conspiracy to commit receiving stolen property and two counts of corrupt organizations.

6. The respondent William DeFelice is and will remain responsibly connected with Palermo Sausage Company.

7. By reason of the aforestated facts, respondents William DeFelice and Palermo Sausage Company are unfit to engage in any business requiring inspection services under Title I of the FMIA and under the PPIA, within the meaning of Section 401 of the FMIA (21 U.S.C. § 671) and the PPIA (21 U.S.C. § 467).

WHEREFORE, it is hereby ordered, that inspection services are denied and withheld indefinitely under Title I of the FMIA and under the PPIA from the respondents William DeFelice and Palermo Sausage Company, and any affiliates, successors or assigns, as authorized by the FMIA and the PPIA.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondents, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final on March 9, 1999.-Editor]

PLANT QUARANTINE ACT

In re: VERONICA HYACINTH.

P.Q. Docket No. 97-0023.

Decision and Order filed December 18, 1998.

Jeffrey Kirmsse, for Complainant.

Respondent, Pro se.

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the movement of fruits and vegetables (7 C.F.R. § 319.56 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 *et seq.* and 380.1 *et seq.*

This proceeding was instituted under the Federal Plant Pest Act, as amended (7 U.S.C. §§ 150aa-150jj), the Plant Quarantine Act, as amended (7 U.S.C. §§ 151-154, 156-165 and 167)(Acts), and the regulations promulgated under the Acts, by a complaint filed on September 12, 1997, by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the admission of the allegations in the complaint constitutes a waiver of hearing. (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Veronica Hyacinth is an individual whose mailing address is 1834 Andrews Avenue, The Bronx, New York, 10453.

2. On or about January 13, 1995 at Jamaica, New York, respondent imported juneplums into the United States from Jamaica, in violation of Section 7 C.F.R. § 319.56-2 because importation of juneplums without a permit is prohibited.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Acts and the regulations issued under the Acts (7 C.F.R. § 319.56 *et seq.*). Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of five hundred dollars (\$500.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to P.Q. Docket No. 97-0023.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final March 17, 1999.-Editor]

In re: SIAGALIMA VAIMAONA.

P.Q. Docket No. 98-0005.

Decision and Order filed December 18, 1998.

Susan Golabek, for Complainant.

Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a

violation of the regulations governing Hawaiian fruits and vegetables (7 C.F.R. §§ 318.13 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 *et seq.* and 7 C.F.R. §§ 380.1 *et seq.*

This proceeding was instituted by a Complaint filed on November 14, 1997, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. This complaint alleged that on or about October 10, 1996, the respondent offered for shipment to a common carrier, namely, the United States Postal Service, approximately 9.6 pounds of fresh breadfruit from Hawaii into the continental United States in violation of Sections 318.13(b) and 318.13-2(a)(1) of the regulations (7 C.F.R. §§ 318.13(b), 318.13-2(a)(1)) because such plant parts are prohibited movement from Hawaii into the continental United States.

The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice provides that the failure to file an answer within the time provided under section 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. § 1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material allegations alleged in the complaint are adopted and set forth herein as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. 7 C.F.R. § 1.139.

Findings of Fact

1. Siagalima Vaimaona, respondent herein, is an individual whose mailing address is 94-1291 Huakai St., Waipahu, HI 96797.

2. On or about October 10, 1996, the respondent offered for shipment to a common carrier, namely, the United States Postal Service, approximately 9.6 pounds of fresh breadfruit from Hawaii into the continental United States in violation of Sections 318.13(b) and 318.13-2(a)(1) of the regulations (7 C.F.R. §§ 318.13(b), 318.13-2(a)(1)) because such plant parts are prohibited movement from Hawaii into the continental United States.

Conclusion

By reason of the facts contained in the Findings of Fact above, the respondent has violated 7 C.F.R. §§ 318.13(b) and 318.13-2(a)(1). Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of three hundred seventy-five dollars (\$ 375.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

within thirty (30) days from the effective date of this Order. Respondent shall indicate that payment is in reference to P.Q. Docket No. 98-0005.

This Order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. 7 C.F.R. § 1.145.

[This Decision and Order became final January 28, 1999.-Editor]

In re: SHELDON O. HIGGINS.

P.Q. Docket No. 98-0006.

Decision and Order filed December 18, 1998.

Susan Golabek, for Complainant.

Respondent, *Pro se*.

Decision and Order issued by James W. Hunt, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the importation of fruits and vegetables (7 C.F.R. §§ 319.56 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 *et seq.* and 7 C.F.R. §§ 380.1 *et seq.*

This proceeding was instituted by a Complaint filed on November 14, 1997, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. This complaint alleged that on or about August 12, 1996, the respondent imported approximately four cashew fruits and two mangoes

from the island of Jamaica into the United States at Jamaica, New York, in violation of 7 C.F.R. § 319.56-2(e), because the cashew fruits and mangoes were not accompanied by a permit, as required.

The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice provides that the failure to file an answer within the time provided under section 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. § 1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material allegations alleged in the complaint are adopted and set forth herein as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. 7 C.F.R. § 1.139.

Findings of Fact

1. Sheldon O. Higgins, respondent herein, is an individual whose mailing address is 53 Acton St., Hartford, CT 06120.

2. On or about August 12, 1996, the respondent imported approximately four cashew fruits and two mangoes from the island of Jamaica into the United States at Jamaica, New York, in violation of 7 C.F.R. § 319.56-2(e), because the cashew fruits and mangoes were not accompanied by a permit, as required.

Conclusion

By reason of the facts contained in the Findings of Fact above, the respondent has violated 7 C.F.R. § 319.56-2(e). Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of five hundred dollars (\$500.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

within thirty (30) days from the effective date of this Order. Respondent shall indicate that payment is in reference to P.Q. Docket No. 98-0006.

This Order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. 7 C.F.R. § 1.145.

[This Decision and Order became final March 5, 1999.-Editor]

**In re: HECTOR HILDAGO, d/b/a H&L TRAVEL INTERNATIONAL.
P.Q. Docket No. 98-0014.
Decision and Order filed December 18, 1998.**

Sheila Novak, for Complainant.

Respondent, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the importation of plants and animal products into the United States (7 C.F.R. § 319 *et seq.* and 9 C.F.R. § 94 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 *et seq.*, and 380.1 *et seq.*

This proceeding was instituted by a complaint filed on May 12, 1998, by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. This complaint alleged that on or about May 20, 1996, at JFK International Airport, Jamaica, New York, respondent imported into the United States approximately three apples from Ecuador in violation of 7 C.F.R. § 319.56-2(e) because the apples were not accompanied by a permit and were not treated, as required. The complaint also alleged that on or about May 20, 1996, at JFK International Airport, Jamaica, New York, respondent imported into the United States, approximately 10 pounds of fresh beef from Ecuador in violation of 9 C.F.R. § 94.1 because the importation of fresh beef from Ecuador is prohibited. Finally, the complaint alleged that on or about May 20, 1996, at JFK International Airport, Jamaica, New York, respondent imported into the United States approximately eight Optunia sp fruit, one papaya, and three giant grenadillas, from Ecuador, in violation of 7 C.F.R. § 319.56-2(e) because the fruit was not accompanied by a permit, as required.

The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing. (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth herein as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Hector Hildago is the owner and operator of H&L Travel International which is located at 287-B Monroe Street, Passaic, NJ 07055.

2. On or about May 20, 1996, at JFK International Airport, Jamaica, New York, respondent imported into the United States approximately three apples from Ecuador in violation of 7 C.F.R. § 319.56-2(e) because the apples were not accompanied by a permit and were not treated, as required.

3. On or about May 20, 1996, at JFK International Airport, Jamaica, New York, respondent imported into the United States, approximately 10 pounds of fresh beef from Ecuador in violation of 9 C.F.R. § 94.1 because the importation of fresh beef from Ecuador is prohibited.

4. On or about May 20, 1996, at JFK International Airport, Jamaica, New York, respondent imported into the United States approximately eight Optunia sp fruit, one papaya, and three giant grenadillas, from Ecuador, in violation of 7 C.F.R. § 319.56-2(e) because the fruit was not accompanied by a permit, as required.

Conclusion

By reason of the facts contained in the Findings of Fact above, the respondent has violated 7 C.F.R. § 319.56-2(e) and 9 C.F.R. § 94.1. Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of two thousand dollars (\$2,000.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days

from the effective date of this Order to :

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 55403
Minneapolis, Minnesota 55403.

Respondents shall indicate that payment is in reference to P.Q. Docket No. 98-14.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final January 30, 1999.-Editor]

In re: HEMLATA KATBAMNA.

P.Q. Docket No. 98-0015.

Decision and Order filed December 18, 1998.

Sheila Novak, for Complainant.

Respondent, Pro se.

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the importation of plants into the United States (7 C.F.R. § 319 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 *et seq.*, and 380.1 *et seq.*

This proceeding was instituted by a complaint filed on July 13, 1998, by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. This complaint alleged that on or about February 1, 1998, at Chicago, IL, respondent imported into the United States approximately two fresh yams from India in violation of 7 C.F.R. § 319.56-2(e) because the yams were not accompanied by a permit and were not treated, as required.

The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a)

shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing. (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth herein as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Hemlata Katbamna is an individual with a mailing address of 4320 Kennedy Drive, # 203, Racine, WI 53404.

2. On or about February 1, 1998, at Chicago, IL, respondent imported into the United States approximately two fresh yams from India in violation of 7 C.F.R. § 319.56-2(e) because the yams were not accompanied by a permit and were not treated, as required.

Conclusion

By reason of the facts contained in the Findings of Fact above, the respondent has violated 9 C.F.R. §§ 71.18 (a)(1)(i), 78.8, and 78.9 (b)(3)(ii). Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of five hundred dollars (\$500.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to :

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 55403
Minneapolis, Minnesota 55403.

Respondents shall indicate that payment is in reference to P.Q. Docket No. 98-15.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Decision and Order upon respondent, unless there is an appeal to the Judicial Officer

pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final February 1, 1999.-Editor]

In re: DARLINE SANON.
P.Q. Docket No. 98-0019.
Decision and Order filed April 1, 1999.

James A. Booth, for Complainant.

Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the importation of fruit from Haiti into the United States (7 C.F.R. § 319.56 *et seq.*) hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 *et seq.* and 380.1 *et seq.*

This proceeding was instituted under the Federal Plant Pest Act, as amended (7 U.S.C. §§ 150aa-150jj), the Plant Quarantine Act, as amended (7 U.S.C. § 151-167)(Acts), and the regulations promulgated under the Acts, by a Complaint filed on September 28, 1998, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. This Complaint alleges that on or about December 1, 1997, the respondent imported fresh mangoes into the United States from Haiti, at Miami, Florida, in violation of 7 C.F.R. §§ 319.56(c), 319.56(e) and 319.56-3, because the mangoes were not imported under permit, as required.

The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.139).

Findings of Fact

1. Darline Sanon, the respondent, is an individual whose mailing address is 3506 14th Street, West, Apartment 242, Bradenton, Florida 34205.

2. On or about December 1, 1997, the respondent imported fresh mangoes into the United States from Haiti, at Miami, Florida, in violation of 7 C.F.R. §§ 319.56(c), 319.56(e) and 319.56-3, because the mangoes were not imported under permit, as required.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Acts and the regulations issued under the Acts (7 C.F.R. § 318.13 *et seq.*). Therefore, the following Order is issued.

Order

Respondent Darline Sanon is hereby assessed a civil penalty of five hundred dollars (\$500.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate on the certified check or money order that payment is in reference to P.Q. Docket No. 98-0019.

This Order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145 of the Rules of Practice.

[This Decision and Order became final June 11, 1999.-Editor]

In re: TUNG T. NGUYEN.

P.Q. Docket No. 98-0018.

Decision and Order filed April 20, 1999.

Howard Levine, for Complainant.

Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the Plant Quarantine Act of August 20, 1912, as amended (7 U.S.C. §§ 151-167) and the Federal Plant Pest Act, as amended (7 U.S.C. §§ 150aa-150jj) (Acts), and the regulations promulgated thereunder (7 C.F.R. § 319.56 *et seq.*).

This proceeding was instituted by a complaint filed against Tung T. Nguyen, respondent, on September 22, 1998, by the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture. Respondent has not filed an answer to date. Pursuant to section 1.136(c) of the rules of practice (7 C.F.R. § 1.136(c)), failure to deny or otherwise respond to the allegations in the complaint constitutes, for the purposes of this proceeding, an admission of said allegations. By respondent's failure to answer, respondent has admitted the allegations of the complaint.

Accordingly, the material allegations alleged in the complaint are adopted and set forth herein as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the rules of practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Tung T. Nguyen, hereinafter referred to as the respondent, is an individual with a mailing address of 138 Southland Boulevard, #4, Louisville, Kentucky 40214.

2. On or about April 14, 1997, the respondent violated 7 C.F.R. § 319.56(c) by importing two (2) kilograms of fresh longan fruits from Vietnam into the United States.

3. On or about April 14, 1997, the respondent violated 9 C.F.R. § 94.9(b) by importing one (1) kilogram of pork sausage from Vietnam into the United States without the required certificate.

4. On or about April 14, 1997, the respondent violated 9 C.F.R. § 94.12(b) by importing one (1) kilogram of pork sausage from Vietnam into the United States without the required certificate.

Conclusion

By reason of the facts contained in paragraphs one through four above, Tung T. Nguyen, respondent, has violated 7 C.F.R. § 319.56(c), 9 C.F.R. § 94.9(b), and 9 C.F.R. § 94.12(b).

Therefore, the following order is issued.

Order

Tung T. Nguyen is hereby assessed a civil penalty of three thousand dollars (\$3000). This penalty shall be payable to "Treasurer of the United States" by certified check or money order, and shall be forwarded to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
Butler Square West, 5th Floor
100 North Sixth Street
Minneapolis, Minnesota 55403

within thirty days from the effective date of this order. The certified check or money order should include the docket number of this proceeding.

This Order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty-five (35) days after service of this Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the rules of practice applicable to this proceeding (7 C.F.R. § 1.145).

[This Decision and Order became final May 29, 1999.-Editor]

In re: MARIA MERAZ.

P.Q. Docket No. 98-0007.

Decision and Order filed May 6, 1999.

Rick Herndon, for Complainant.

Respondent, Pro se.

Decision and Order issued by James W. Hunt, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the movement of fruits and vegetables (7 C.F.R. § 319.56 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 *et seq.* and 380.1 *et seq.*

This proceeding was instituted under the Federal Plant Pest Act, as amended (7 U.S.C. §§ 150aa-150jj), the Plant Quarantine Act, as amended (7 U.S.C. §§ 151-154, 156-165 and 167)(Acts), and the regulations promulgated under the Acts, by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, on November 14, 1997. The respondent failed to file an answer within the time provided under 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that a failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing (7 C.F.R. § 1.139).

Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Maria Meraz, herein referred to as the respondent, is an individual whose mailing address is 7243 Kelvin Avenue, #220, Canoga Park, California 91306.

2. On or about May 14, 1996, at Los Angeles, California, respondent imported fifty fresh mangoes from El Salvador into the United States in violation of 7 C.F.R. § 319.56, because the importation of mangoes from El Salvador is prohibited.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Acts and the regulations issued under the Acts (7 C.F.R. § 319.56 *et seq.*).

Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of five hundred dollars (\$500.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to P.Q. Docket No. 98-0007.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final June 17, 1999.-Editor]
